

1 **RULE 7.1 Communications Concerning A Lawyer's Services**

2
3 (a) A lawyer shall not make a false or misleading communication about the
4 lawyer or the lawyer's services. A communication is false or misleading if it contains a
5 material misrepresentation of fact or law, or omits a fact when omission of such fact
6 makes the statement materially false or misleading as a whole.

7 (b) Any advertising pursuant to this Rule shall include the name and office
8 address of at least one lawyer responsible for its content; or, in the alternative, a law firm
9 may file with the Virginia State Bar a current written statement identifying the lawyer
10 responsible for the law firm's advertising and its office address. The law firm shall
11 promptly update the written statement if there is any change in status.

12 (c) A lawyer shall timely respond to and fully cooperate with any requests for
13 information by Ethics Counsel regarding the lawyer's advertising.

14 **COMMENT**

15 [1] This Rule governs all communications about a lawyer's services, including
16 advertising. Lawyer advertising is commercial speech, the purpose of which is to promote
17 or propose the hiring of the lawyer. This Rule is not intended to regulate other forms of
18 non-commercial speech by lawyers such as political or religious commentary. Whatever
19 means are used to communicate regarding a lawyer's services, statements about them
20 must be truthful and not misleading. A statement or claim is misleading if it is likely to
21 mislead the public or a prospective client. For example, a statement that "you pay nothing
22 unless we win" is false and misleading if the client is held responsible for payment or
23 reimbursement of costs or expenses related to the client's case, as required by Rule
24 1.8(e). Similarly, a statement or claim that a lawyer handles a particular type of case, i.e.,
25 products liability, is false and misleading if the lawyer does not practice in that area of
26 law and the lawyer's only involvement is to intake the client and then refer the client to
27 another lawyer outside the firm.

28 [1a] Advertisements and personal communications that are not false or
29 misleading will make it apparent that the necessity and advisability of legal action
30 depends on variant factors that must be evaluated individually. Due to fee information
31 that may frequently be incomplete and misleading to a layperson, a lawyer should
32 exercise great care that fee information is complete and accurate. Due to the individuality
33 of each legal problem, statements regarding average, minimum, or estimated fees may be
34 misleading, as will commercial publicity conveying information as to results previously
35 achieved, general or average solutions, or expected outcomes. It would be misleading to
36 advertise a set fee for a specific type of case without adhering to the stated fee in
37 charging clients. Advertisements or other claims that convey an impression that the
38 ingenuity of the lawyer, rather than the justice of the claim is determinative are similarly
39 likely to be misleading. Commercial publicity and personal communications addressed to
40 undertaking any legal action should always indicate the provisions of such undertaking
41 and should disclose the impossibility of assuring any particular result. Not only must
42 communication be truthful, but its meaning must be capable of being understood by the
43 reasonably prudent layperson.

44 [2] Truthful statements that are misleading are also prohibited by this Rule. A
45 truthful statement is misleading if it omits a fact necessary to make the lawyer's
46 communication considered as a whole not materially misleading. A truthful statement is
47 also misleading if there is a substantial likelihood that it will lead a reasonable person to

48 formulate a specific conclusion about the lawyer or the lawyer's services for which there
49 is no reasonable factual foundation. A good example of a truthful statement that is
50 misleading by omission of a material fact is the statement "We won a \$2 million verdict
51 in this case" when in fact the verdict had been overturned by the court. The omission of
52 that key fact makes the statement itself misleading.

53 [3] A statement or claim that an outcome was not or will not be related to the facts
54 or merits of the particular matter is false or misleading and, therefore, improper. An
55 advertisement that truthfully reports a lawyer's achievements on behalf of clients or
56 former clients may be misleading if presented so as to lead a reasonable person to form
57 an unjustified expectation that the same results could be obtained for other clients in
58 similar matters without reference to the specific factual and legal circumstances of each
59 client's case. Further, any statement or claim that is likely to create an unjustified
60 expectation about the results the lawyer can achieve is misleading. The inclusion of an
61 appropriate disclaimer or qualifying language may preclude a finding that a statement is
62 likely to create unjustified expectations or otherwise mislead a prospective client.
63 Whether a particular disclaimer is sufficient will depend on its content and the manner in
64 which it is displayed in the context of the advertisement.

65 [3a] Similarly, an unsubstantiated comparison of the lawyer's services or fees
66 with the services or fees of other lawyers may be misleading if presented with such
67 specificity as would lead a reasonable person to conclude that the comparison can be
68 substantiated.

69 [3b] A lawyer may advertise that he or she is an expert in an area of practice
70 provided the claim is truthful and can be substantiated. For purposes of this Rule, an
71 expert is defined as a lawyer who possesses, as a result of experience, study, or training,
72 knowledge of a particular subject or expertise that is superior to what average lawyers
73 generally acquire.

74 [3c] A lawyer may indicate areas of practice in communications about the
75 lawyer's services. A lawyer who practices only in certain fields or who will not accept
76 matters in a specified field or fields is permitted to so indicate. A lawyer is generally
77 allowed to state that he or she is a "specialist," practices a "specialty," or "specializes in"
78 particular fields; however, such communications are subject to the "false and misleading"
79 standard. A lawyer may advertise the fact that he or she has been certified as a specialist
80 in a field of law by a named organization, provided the communication is not false or
81 misleading and provided the specialty certification has been conferred on the basis of
82 criteria that factually substantiate the specialization claim.

83 [4] Statements or claims made by others about the lawyer's services are governed
84 by this rule if the lawyer adopts them in his or her communications. See also Rule 8.4(a)
85 regarding violations of the Rules of Professional Conduct through the agency of another.

86 [5] Public communications means all communication other than "in-person"
87 communication as defined by Rule 7.3.

88 [6] This Rule permits public dissemination of information concerning, for
89 example, a lawyer's name or firm name, address, and telephone number; the kinds of
90 services the lawyer will undertake; the basis on which the lawyer's fees are determined,
91 including prices for specific services and payment and credit arrangements; a lawyer's
92 foreign language ability; names of references and, with their consent, names of clients

93 regularly represented; and other information that might invite the attention of those
94 seeking legal assistance.

95 **COMMITTEE COMMENTARY**

96 The Committee has revised Rule 7.1-7.5 in their entirety. Rule 7.2 and 7.4 have been
97 eliminated and relevant parts of Rule 7.2 regarding lawyer advertising are incorporated
98 within Rule 7.1 as Communications covers all lawyer advertising; relevant parts of Rule
99 7.2 regarding paying others to recommend a lawyer have been incorporated within Rule
100 7.3.

1 **RULE 7.3 Direct Contact With Potential Clients**

2 (a) A lawyer shall not solicit professional employment from a potential client by
3 in-person, live telephone, or real-time electronic contact when a significant motive for the
4 lawyer's doing so is the lawyer's pecuniary gain, if such solicitation involves harassment,
5 undue influence, coercion, duress, compulsion, intimidation, threats or unwarranted
6 promises of benefits, taking into consideration the vulnerability of the potential client.
7 The potential client's sophistication and physical, emotional and mental states are factors
8 to be considered in determining the propriety of the solicitation.

9 (b) A lawyer shall not solicit professional employment from a potential client by
10 written, recorded or electronic communication or by in-person, telephone or real-time
11 electronic contact even when not otherwise prohibited by paragraph (a), if:

12 (1) the potential client has made known to the lawyer a desire not to be
13 solicited by the lawyer; or

14 (2) the solicitation involves coercion, duress or harassment.

15 (c) A lawyer shall not give anything of value to a person for recommending the
16 lawyer's services except that a lawyer may:

17 (1) pay the reasonable costs of advertisements or communications permitted by
18 this Rule and Rule 7.1;

19 (2) pay the usual charges of a legal service plan or a not-for-profit qualified
20 lawyer referral service;

21 (3) pay for a law practice in accordance with Rule 1.17; and

22 (4) give nominal gifts of gratitude that are neither intended nor reasonably
23 expected to be a form of compensation for recommending a lawyer's services.

24 d) Every written, recorded or electronic communication from a lawyer soliciting
25 professional employment from a potential client known to be in need of legal services in
26 a particular matter shall conspicuously display the words "ADVERTISING
27 MATERIAL" on the outside envelope, if any, and at the beginning and ending of any
28 recorded or electronic communication, unless the recipient of the communication:

29 (1) is a lawyer; or

30 (2) has a familial, personal, or prior professional relationship with the
31 lawyer; or

32 (3) is one who has had prior contact with the lawyer.

33 (e) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate
34 with a prepaid or group legal service plan operated by an organization not owned or
35 directed by the lawyer that uses in-person or telephone contact to solicit memberships or
36 subscriptions for the plan from persons who are not known to need legal services in a
37 particular matter covered by the plan.

38 COMMENT

39 *Direct Contact Between Lawyers and Laypersons*

40 [1] There is a potential for abuse inherent in direct in-person, live telephone, or
41 real-time electronic contact by a lawyer with a potential client known to need legal
42 services. These forms of contact are not limited to matters involving personal injury or
43 wrongful death. For example, a person in need of legal services for a divorce, bankruptcy
44 or criminal defense case may be just as overwhelmed and vulnerable to suggestion as a
45 person in need of legal services in cases involving personal injury or wrongful death.
46 These forms of contact between a lawyer and a potential client subject the layperson to
47 the private importuning of the trained advocate in a direct interpersonal encounter. The
48 potential client, who may already feel overwhelmed by the circumstances giving rise to
49 the need for legal services, may find it difficult to evaluate all available alternatives with
50 reasoned judgment and appropriate self-interest in the face of the lawyer's presence and
51 insistence upon being retained immediately. The situation is fraught with the possibility
52 of undue influence, intimidation, and over-reaching. Alternatively, there are times when
53 specific circumstances warrant the need of legal services in a timely manner to protect the
54 person's legal interests.

55 [1a] A solicitation is a targeted communication initiated by the lawyer that is
56 directed to a specific potential client and that offers to provide, or can reasonably be
57 understood as offering to provide, legal services. In contrast, a lawyer's communication
58 typically does not constitute a solicitation if it is directed to the general public, such as
59 through a billboard, an Internet banner advertisement, a website or a television
60 commercial, or if it is in response to a request for information or is automatically
61 generated in response to Internet searches.

62 [2] This potential for abuse inherent in direct in-person, live telephone, or real-
63 time electronic solicitation of potential clients justifies its regulation, particularly because
64 lawyer advertising and written and recorded communication offer alternative means of
65 conveying necessary information to those who may be in need of legal services.
66 Advertising and written and recorded communications that may be mailed or autodialed
67 make it possible for a potential client to be informed about the need for legal services,
68 and about the qualifications of available lawyers and law firms, without subjecting the
69 potential client to direct in-person, telephone, or real-time electronic persuasion that may
70 overwhelm the client's judgment.

71 [3] The use of general advertising and written, recorded, or electronic
72 communications to transmit information from lawyer to potential client, rather than direct
73 in-person, live telephone or real-time electronic contact, will help to assure that the
74 information flows cleanly as well as freely. The contents of advertisements and
75 communications can be permanently recorded so that they cannot be disputed and may be
76 shared with others who know the lawyer. This potential for informal review is itself
77 likely to help guard against statements and claims that might constitute false and
78 misleading communications, in violation of Rule 7.1. The contents of direct in-person,
79 live telephone or real-time electronic conversations between a lawyer and a potential
80 client can be disputed and may not be subject to third-party scrutiny. Consequently, they
81 are much more likely to approach (and occasionally cross) the dividing line between
82 accurate representations and those that are false and misleading.

83 [4] There is far less likelihood that a lawyer would engage in abusive practices
84 against an individual who is a former client, or with whom the lawyer has close personal

85 or family relationship, or in situations in which the lawyer is motivated by considerations
86 other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the
87 person contacted is a lawyer or when the person has already initiated contact with the
88 lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule
89 7.3(d) are not applicable in those situations. Also, paragraph (a) is not intended to
90 prohibit a lawyer from participating in constitutionally protected activities of public or
91 charitable legal service organizations or bona fide political, social, civic, fraternal,
92 employee or trade organizations whose purposes include providing or recommending
93 legal services to its members or beneficiaries.

94 [5] Even permitted forms of solicitation can be abused; thus, any solicitation that
95 contains information that is false or misleading within the meaning of Rule 7.1, which
96 involves coercion, duress or harassment within the meaning of Rule 7.3(b), or which
97 involves contact with a potential client who has made known to the lawyer a desire not to
98 be solicited by the lawyer within the meaning of Rule 7.3(b), is prohibited. Moreover, if
99 after sending a letter or other communication to a potential client the lawyer receives no
100 response, any further effort to communicate with the potential client may violate the
101 provisions of Rule 7.3(b). Solicitation can be found in the totality of all of the
102 circumstances of the communication, including the background of the parties, the parties'
103 previous relationship, the lawyer's conduct and the words spoken.

104 ***Paying Others to Recommend a Lawyer***

105 [6] Lawyers are not permitted to pay others for channeling professional work.
106 However, Paragraph (c)(1) allows a lawyer to pay for advertising and communications
107 permitted by this Rule, including the costs of print directory listings, on-line directory
108 listings, newspaper ads, television and radio airtime, domain-name registrations,
109 sponsorship fees, banner ads, and group advertising. A lawyer may compensate
110 employees, agents, and vendors who are engaged to provide marketing or client-
111 development services, such as publicists, public-relations personnel, business-
112 development staff, and website designers. See Rule 5.3 for the duties of lawyers and law
113 firms with respect to the conduct of nonlawyers who prepare marketing materials for
114 them.

115 [6a] Selection of a lawyer by a layperson should be made on an informed basis.
116 Advice and recommendation of third parties—relatives, friends, acquaintances, business
117 associates, or other lawyers—and publicity and personal communications from lawyers
118 may help to make this possible. A lawyer should not compensate another person for
119 recommending him or her, for influencing a potential client to employ him or her, or to
120 encourage future recommendations.

121 [7] A lawyer may pay the usual charges of a legal service plan or a not-for-profit
122 lawyer referral service. A legal service plan is a prepaid or group legal service plan or a
123 similar delivery system that assists potential clients to secure legal representation. Not-
124 for-profit lawyer referral services are consumer-oriented organizations that provide
125 unbiased referrals to lawyers with appropriate experience in the subject matter of the
126 representation and afford other client protections, such as complaint procedures or
127 malpractice insurance requirements. Consequently, this Rule permits a lawyer to pay only
128 the usual charges of a not-for-profit lawyer referral service.

129 [8] A lawyer who accepts assignments or referrals from a legal service plan or
130 referrals from a not-for-profit lawyer referral service must act reasonably to assure that
131 the activities of the plan or service are compatible with the lawyer's professional

132 obligations. See Rule 5.3. Legal service plans and not-for-profit lawyer referral services
133 may communicate with potential clients, but such communication must be in conformity
134 with these Rules. Thus, advertising must not be false or misleading, as would be the case
135 if the communications of a group advertising program or a group legal services plan
136 would mislead potential clients to think that it was a lawyer referral service sponsored by
137 a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or
138 real-time contacts that would violate Rule 7.3.

139 *Lawyer Recommendations*

140 [9] This Rule is not intended to prohibit a lawyer from contacting representatives
141 of organizations or groups that may be interested in establishing a group or prepaid legal
142 plan for their members, insureds, beneficiaries or other third parties for the purpose of
143 informing such entities of the availability of and details concerning the plan or
144 arrangement that the lawyer or lawyer's firm is willing to offer. This form of
145 communication is not directed to a potential client. Rather, it is usually addressed to an
146 individual acting in a fiduciary capacity seeking a supplier of legal services for others
147 who may, if they choose, become prospective clients of the lawyer. Under these
148 circumstances, the activity that the lawyer undertakes in communicating with such
149 representatives and the type of information transmitted to the individual are functionally
150 similar to and serve the same purpose as lawyer communications permitted by these
151 rules.

152 [10] The requirement in Rule 7.3(d) that certain communications be marked
153 "ADVERTISING MATERIAL" does not apply to communications sent in response to
154 requests of potential clients or their spokespersons or sponsors; however, prior contact
155 from the lawyer in the form of advertising material does not circumvent the need to
156 include the words "ADVERTISING MATERIAL" in future contacts. General
157 announcements by lawyers, including changes in personnel or office location, do not
158 constitute communications soliciting professional employment from a potential client
159 known to be in need of legal services within the meaning of this Rule.

160 [11] Paragraph (e) of this Rule permits a lawyer to participate with an
161 organization that uses personal contact to solicit members for its group or prepaid legal
162 service plan, provided that the personal contact is not undertaken by any lawyer who
163 would be a provider of legal services through the plan. The organization must not be
164 owned by or directed, whether as manager or otherwise, by any lawyer or law firm that
165 participates in the plan. For example, paragraph (e) would not permit a lawyer to create
166 an organization controlled directly or indirectly by the lawyer and use the organization
167 for the in-person or telephone solicitation of legal employment of the lawyer through
168 memberships in the plan or otherwise. The communication permitted by these
169 organizations also must not be directed to a person known to need legal services in a
170 particular matter, but is to be designed to inform potential plan members generally of
171 another means of affordable legal services. Lawyers who participate in a legal service
172 plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1 and
173 7.3(c). See also 8.4(a).

174 **COMMITTEE COMMENTARY**

175 The Committee changed the rule to refer to the "potential" client as a result of the recent
176 adoption of Rule 1.18 which narrowly defines the "prospective" client.

1 **Rule 7.5 Lawyer and Firm Names and Letterheads**

2 (a) A lawyer shall not use a name, firm name, letterhead, or other professional
3 designation that violates Rule 7.1. A trade name may be used by a lawyer in private
4 practice if it does not imply a connection with a government agency or with a public or
5 charitable legal services organization and is not otherwise in violation of Rule 7.1.

6 (b) A law firm with offices in more than one jurisdiction may use the same name
7 or other professional designation in each jurisdiction, but identification of the lawyers in
8 an office of the firm shall indicate the jurisdictions in which they are licensed to practice
9 if they are not licensed to practice in the jurisdiction where the office is located.

10 (c) The name of a lawyer holding a public office shall not be used in the name of
11 a law firm, or in communications on its behalf, during any substantial period in which the
12 lawyer is not actively and regularly practicing with the firm.

13 (d) Lawyers may state or imply that they practice in a partnership or other
14 organization only when that is the fact.

15 **COMMENT**

16 [1] A firm may be designated by the names of all or some of its members, by the
17 names of deceased members where there has been a continuing succession in the firm's
18 identity, or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may
19 also be designated by a distinctive website address or comparable professional
20 designation. Although the United States Supreme Court has held that legislation may
21 prohibit the use of trade names in professional practice, use of such names in law practice
22 is acceptable so long as it is not misleading. If a private firm uses a trade name that
23 includes a geographical name such as "Springfield Legal Clinic," an express disclaimer
24 that it is not a public legal aid agency may be required to avoid a misleading implication.
25 It may be observed that any firm name including the name of a deceased partner is,
26 strictly speaking, a trade name. The use of such names to designate law firms has proven
27 a useful means of identification. However, it is misleading to use the name of a lawyer
28 not associated with the firm or a predecessor of the firm, or the name of a nonlawyer.

29 [2] With regard to paragraph (d), lawyers sharing office facilities, but who are not
30 in fact partners associated with each other in a law firm, may not denominate themselves
31 as, for example, "Smith and Jones," for that title suggests that they are practicing law
32 together in a firm.

33 [3] Lawyers should practice using the official name under which they are licensed
34 or seek an appropriate and legal change of name from the Supreme Court of Virginia.
35 The lawyer's use of a name other than the lawyer's name on record with the Virginia
36 State Bar may be a misleading communication about the lawyer's services to the public
37 in violation of Rule 7.1.